

# CHILD SUPPORT FOR ADULT CHILDREN

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## I. INTRODUCTION

At the mention of intergenerational support, many people think of children's duties to their parents.<sup>1</sup> The concept of intergenerational support, however, also includes the concept of continued parental financial support of children past the age of majority.

The continuation of child support into adulthood<sup>2</sup> is no doubt controversial,<sup>3</sup> and there is no comprehensive or consistent law on the subject. Adult children who may need parental support include university students, disabled adults, and the unemployed.<sup>4</sup> The vulnerability of these groups in today's economy has resulted in their

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1. This may be especially true in certain cultures. For example, many Chinese families have viewed daughters as offering emotional care, loyalty, and intimacy. Kay Johnson, *Politics of International and Domestic Adoption in China*, 36 *LAW & SOC'Y REV.* 379 (2002). In other cultures, children may be slower to become independent of their parents, such as in Europe. Thomas D. Cook & Frank F. Furstenberg Jr., *Explaining Aspects of the Transition to Adulthood in Italy, Sweden, Germany, and the United States: A Cross-Disciplinary, Case Synthesis Approach*, 580 *ANNALS* 257, 264–65 (2002) (noting that many Italian adult children live with their parents).

2. "Post-majority" indicates the time period after a child reaches the statutory age of majority, or adulthood. Some literature uses "post-majority" and "post-minority" interchangeably.

3. Legal issues often arise when parents attempt to draw financial lines regarding their children. An obvious example is when unwed fathers attempt to circumvent child support. The law has evolved to deal with this common fact pattern. See, e.g., Margaret Ryznar, *Two to Tango, One in Limbo: A Comparative Analysis of Fathers' Rights in Infant Adoptions*, 47 *DUQ. L. REV.* 89 (2009). Both wed and unwed parents of both genders, however, occasionally encounter the less obvious issue of post-majority child support that is considered in this Article.

4. See *infra* Part II.A.

increased reliance on family support, prompting many questions regarding the legal obligations of their parents.

Different states have taken differing legal approaches to this issue. While some have not addressed the issue, others have enacted post-majority support statutes.<sup>5</sup> In the latter states, the issue often arises in divorce cases, when the court must determine the financial support of any children resulting from the marriage. In such proceedings for dissolution of marriage, legal separation, or child support, post-majority support may be ordered just as regular child support would be ordered for a minor child.<sup>6</sup>

Although certain American courts may order post-majority child support for college students and disabled adults, their approaches are neither uniform nor universal. In many ways, post-majority support is controversial, thereby benefiting from the insights afforded by other countries that permit post-majority child support, such as Poland.

In Poland, courts have ordered child support for adult children outside the context of divorces—sometimes even for unemployed adult children who are not students—after finding a general duty for parents to support their adult children who are unable to provide their own maintenance. This approach, different from that in the United States, offers insights into the issue of intergenerational support.

Accordingly, Part II of this Article begins by surveying American law on intergenerational support obligations, with a focus on post-majority child support. Part III considers equivalent European law, emphasizing Poland's approach. Finally, Part IV analyzes the lessons drawn from a comparison of these approaches, and includes a discussion of the implications for child support enforcement and family unit modeling.

## II. AMERICAN LAW ON POST-MAJORITY CHILD SUPPORT

Family law is in the domain of the states and, accordingly, these laws differ among the states.<sup>7</sup> This is especially true in the laws on post-

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5. See *infra* notes 30–31.

6. See generally Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. L.Q. 7 (1999) (describing state child support guidelines); CARL E. SCHNEIDER AND MARGARET F. BRINIG, AN INVITATION TO FAMILY LAW: PRINCIPLES, PROCESSES AND PERSPECTIVES 1192–1247 (2006) (discussing the dimensions of the child support responsibility).

7. See Kristin A. Collins, *Federalism's Fallacy: The Early Tradition of Federal Family Law and the Invention of States' Rights*, 26 CARDOZO L. REV. 1761 (2005) (noting

majority child support, where there has been a wide range of approaches to this issue by the states—far greater than the consistently aggressive approach taken towards child support for minor children.<sup>8</sup> Before considering the relevant state laws on post-majority child support, it is important to first consider the universal circumstances that would require such support.

#### *A. Circumstances Necessitating Parental Support to Adult Children*

The worldwide economic recession that began in 2008, as well as the pattern of increasing educational and healthcare costs, has resulted in financial stresses for adults, and especially young adults, that have prompted many of them to turn to family support. A consideration of these realities provides a helpful background for the more theoretical questions of the appropriate legal regimes to govern such situations.

Raising a child in the United States is expensive,<sup>9</sup> with the average per-child expenditure being \$221,190 through the age of seventeen.<sup>10</sup> These expenses can be divided into many categories, two of which are 1) the expenses incurred during the child's minority and 2) those incurred during the child's majority. In the first group, there are the costs relating

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that family law is currently in the domain of the states, but that, historically, the federal government was not limited in this way). *But see* Libby S. Adler, *Federalism and Family*, 8 COLUM. J. GENDER & L. 197 (1999) (arguing that there is no foundation for the view that family law belongs in the state domain). Justice Antonin Scalia has expressed concern about the increasing federalization of family law:

I think it obvious . . . that we will be ushering in a new regime of judicially prescribed, and federally prescribed, family law. I have no reason to believe that federal judges will be better at this than state legislatures; and state legislatures have the great advantages of doing harm in a more circumscribed area, of being able to correct their mistakes in a flash, and of being removable by the people.

*Troxel v. Granville*, 530 U.S. 57, 93 (2000) (Scalia, J., dissenting).

8. *See, e.g.*, Ann Laquer Estin, *Moving Beyond the Child Support Revolution*, 26 LAW & SOC. INQUIRY 505, 505 (2001) (reviewing CHILD SUPPORT: THE NEXT FRONTIER (Thomas Oldham & Marygold S. Melli eds., 2000)).

9. This diverges from historical times when people received economic benefits from their children. Although historically children have been expected to substantively contribute to the family, child labor was disfavored beginning in the latter phases of the industrialization. Today, instead of contributing to the family, a child costs the family. *See, e.g.*, HUGH D. HINDMAN, CHILD LABOR: AN AMERICAN HISTORY 8 (2002) (noting that the average child currently costs a household, instead of financially contributing).

10. MARK LINO & ANDREA CARLSON, U.S. DEP'T OF AGRIC., CENT. FOR NUTRITION POL'Y AND PROMOTION, EXPENDITURES ON CHILDREN BY FAMILIES 20 (2008), *available at* <http://www.cnpp.usda.gov/Publications/CRC/crc2008.pdf>. According to experts from the Adam Smith Center, the cost of upbringing per child in Poland is 190,000 PLN (approximately \$65,000).

to pregnancy and child care. Less obvious expenses in this category include those incurred by a woman's lost wages due to childbearing and her common subsequent preference for part-time work.<sup>11</sup>

The latter group of parenthood expenses—those incurred during a child's older years—may be more controversial given that it is not clear if and when parents should pay them. These expenses often center on a child's education, such as whether it should be public or private, and whether parents should pay for university or not.

Many commentators have argued that a college education is necessary to enter the middle class in the United States and that education plays an essential role in American society.<sup>12</sup> As university education can be expensive,<sup>13</sup> many students take out loans to achieve their educational goals.<sup>14</sup> This is true even in Europe, where tuition has remained relatively inexpensive.<sup>15</sup>

Different families have different resources to offset these costs.<sup>16</sup>

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11. See, e.g., Marianne Bertrand et al., *Dynamics of the Gender Gap for Young Professionals in the Corporate and Financial Sectors* 2–4 (Nat'l Bureau of Econ. Research, Working Paper No. 14,681, 2009), available at <http://www.nber.org/papers/w14681.pdf> (reporting that many women curtail their work after having children); Alex M. David, *New York City Bar, Law Firm Diversity Benchmarking Report: 2006 Report to Signatories of the Statement of Diversity Principles*, in BEYOND DIVERSITY 101, at 213, 235 (2008), available at <http://www.abanet.org/minorities/docs/FirmBenchmarking06.pdf> (finding that over nine percent of New York City women attorneys work flexibly compared to about one percent of men); Marin Clarkberg & Phyllis Moen, *Understanding the Time Squeeze: Married Couples' Preferred and Actual Work-Hour Strategies*, 44 AM. BEHAV. SCIENTIST 1115, 1133 (2001) (suggesting that women, not men, typically prefer part-time work).

12. See, e.g., Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 IND. L. REV. 343, 345 (2001).

13. See, e.g., Ben Wildavsky, *Paying for College: Is that the Real Price?*, U.S. NEWS & WORLD REP., Sept. 6, 1999, at 64 ("Since 1980, the average tuition at four-year institutions has more than doubled after adjusting for inflation, while the median family income for the parents of college-age children has increased just [twelve] percent.").

14. Michael C. Macchiarola & Arun Abraham, *Options for Student Borrowers: A Derivatives-Based Proposal to Protect Students and Control Debt-Fueled Inflation in the Higher Education Market*, 20 CORNELL J.L. & PUB. POL'Y 67, 69–70 (2010); William S. Howard, *The Student Loan Crisis and the Race to Princeton Law School*, 7 J.L. ECON. & POL'Y 485, 485–87 (2011); see also Kimberly M. Gartner & Elizabeth R. Schiltz, *What's Your Score? Educating College Students about Credit Card Debt*, 24 ST. LOUIS U. PUB. L. REV. 401, 401 (2005).

15. Aisha Labi, *British Lawmakers Approve Sharp Increase in Tuition at English Universities*, THE CHRON. OF HIGHER EDUC., Dec. 9, 2010, available at <http://chronicle.com/article/British-Lawmakers-Approve/125665/>. However, according to the Constitution of the Republic of Poland, education in public schools is free of charge for Polish citizens and the best universities in Poland are public.

16. See *infra* notes 17–19.

While some parents save money for their children's education for decades,<sup>17</sup> others do not feel the same obligation. Additionally, families have differing levels of income and wealth.<sup>18</sup> With increasing college tuition costs, however, those children with parental financial support for college are at a significant advantage.<sup>19</sup>

Beyond the significant expense of a university education, circumstances such as a child's disability may require post-majority child support.<sup>20</sup> This includes both the relevant health care costs and home-care costs to assist with the disability.<sup>21</sup> Furthermore, people with disabilities may lose out on wages—unemployment among them is significantly higher than average.<sup>22</sup>

In fact, unemployment for any person in the current recession may result in a request for parental support. The unemployment rate for the general American population has hovered at approximately 9% after the economic crisis began in 2008.<sup>23</sup> Meanwhile, unemployment among young people and college students surged to almost 20% in 2010.<sup>24</sup> In

17. There are college savings plans that allow parents to begin saving as soon as they expect a child. See, e.g., U.S. SECURITIES AND EXCHANGE COMMISSION, AN INTRODUCTION TO 529 PLANS (2007), available at <http://www.sec.gov/investor/pubs/intro529.htm>.

18. See, e.g., U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES UNITED STATES (2010), available at [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm).

19. For example, they do not need to take high-paying jobs to repay their college loans. See generally Macchiarola & Abraham, *supra* note 14, at 69 (noting many students' large loans); Howard, *supra* note 14, at 485–87.

20. See, e.g., Karen Syma Czapanskiy, *Chalimony: Seeking Equity Between Parents of Children with Disabilities and Chronic Illnesses*, 34 N.Y.U. REV. L. & SOC. CHANGE 253, 254 (2010) (arguing for the creation of "chalimony" as a remedy in divorce law for addressing some of the economic losses experienced by the custodial, caregiving parent of children with disabilities or chronic illnesses).

21. *Out-of-Pocket Health-Care Costs for Disabled Children Vary Widely by State*, UNC SCH. OF SOC. WORK (July 15, 2008), [http://ssw.unc.edu/about/news/disabled\\_costs\\_07-15-08](http://ssw.unc.edu/about/news/disabled_costs_07-15-08).

22. *Key Communication Messages*, THE WORLD BANK, available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTDISABILITY/0,,contentMDK:22559906~menuPK:6522145~pagePK:210058~piPK:210062~theSitePK:282699,00.html#footnote3> (last visited Feb. 16, 2012) ("For example, the gap between employment rates of working-age people with and without disabilities in the United States in 2007 was 42.8 percentage points."); see also Rachel Perkins & Miles Rinaldi, *Unemployment Rates Among Patients with Long-term Mental Health Problems: A Decade of Rising Unemployment*, 26 PSYCHIATRIC BULLETIN 295 (2002), available at [http://web.mac.com/kristian.pfanzelter/iWeb/Project/Secondary%20sources\\_files/Perkins%20%26%20Rinaldi%20\(2002\)%20Decade%20of%20Rising%20Unemployment.pdf](http://web.mac.com/kristian.pfanzelter/iWeb/Project/Secondary%20sources_files/Perkins%20%26%20Rinaldi%20(2002)%20Decade%20of%20Rising%20Unemployment.pdf).

23. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, EMPLOYMENT SITUATION SUMMARY (Feb. 3, 2011), available at <http://www.bls.gov/news.release/empsit.nr0.htm>.

24. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, EMPLOYMENT AND UNEMPLOYMENT AMONG YOUTH—SUMER 2010 (Aug. 24, 2011), available at

July 2010, the share of young people employed was the lowest July rate on record, which began in 1948.<sup>25</sup> In 2009, almost 50% of college-educated youth were either unemployed or working in a job that did not require a college degree, with a median annual earning of \$15,896.<sup>26</sup>

Therefore, it is not difficult to imagine the circumstances under which adult children would benefit from financial help from their parents—whether due to college costs, disability, or unemployment. In fact, any person in a difficult financial situation may stand to benefit from parental help, prompting the question of when such help is appropriate, and if it should ever be mandated by the law.

### *B. American State Laws on Support*

Family law is in the domain of the states and, accordingly, these laws differ among the states.<sup>27</sup> One exception has been the federalization of child support and, in particular, child support enforcement.<sup>28</sup> Federal involvement has increased the success of collection, without which the taxpayers would bear the costs of unsupported children.<sup>29</sup>

However, the federalized notion of child support is limited to minor children. The theory of post-majority support, on the other hand, has been left to the states, thereby differing from state to state. And, while most states do not require children's post-majority support,<sup>30</sup> others have

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<http://www.bls.gov/news.release/youth.nr0.htm>.

25. *Id.*

26. Trader Mark, *NYT: Nearly 50% of 2009 College Graduates are Either Jobless, or Working in Jobs That Don't Require a College Degree*, INTERNATIONAL BUSINESS TIMES, May 20, 2011, available at <http://www.ibtimes.com/articles/149287/20110520/nyt-nearly-50-of-2009-college-graduates-are-either-jobless-or-working-in-jobs-that-dont-requirecolle.htm>.

27. See Collins, *supra* note 7 and accompanying text.

28. See, e.g., *Turner v. Rogers*, 131 S. Ct. 2507 (2011) (holding by the U.S. Supreme Court that the states need not provide counsel to indigent noncustodial fathers facing incarceration in civil contempt proceedings for nonpayment of child support).

29. See, e.g., Estin, *supra* note 8, at 505 ("Much of the motivation for the enormous national effort and expense devoted to the child support revolution was the promise that better support enforcement would help keep single-parent families off the welfare rolls and allow the government to recoup its growing expenditures for public benefits.").

30. See, e.g., Madeline Marzano-Lesnevich & Scott Adam Lattery, *Child Support and College: What is the Correct Result?*, 22 J. AM. ACAD. MATRIMONIAL LAW 335, 339 (2009) ("A review of the law throughout the nation on the issues of child support for children in college, and the definition of college expenses, yields a wide array of results. The majority of states contain no provision requiring parents to contribute toward their children's college costs. Moreover, the majority of these states call for a child's emancipation no later than the child's graduation from high school.").

enacted post-majority support statutes that require parents to financially support their adult children. For example, parents may be partially liable to pay for their children's college education.<sup>31</sup>

This issue is often seen in divorce cases, which aim to determine the financial support of any children resulting from the marriage. Therefore, often post-majority support may be ordered in a proceeding for the dissolution of marriage, legal separation, or child support, just like regular child support could be ordered for a minor child.<sup>32</sup>

There are many state post-majority statutes that allow such support. In Missouri, for example, child support is terminated when the child either dies, marries, enters active duty in the military, is self-supporting, or becomes eighteen.<sup>33</sup> However, the Missouri legislation includes a lengthy description of child support potentially owed to college students, but the support is capped once the child reaches the age of twenty-one or finishes the program, whichever occurs first.<sup>34</sup> To receive the support, the child must continue to attend and progress toward the completion of a secondary school program of instruction.<sup>35</sup> There are strict requirements for the child in these circumstances, including that the child must enroll in college in the fall following high school, take at least twelve credit hours per semester, and show each semester's transcript to the parents.<sup>36</sup>

In Colorado, children reaching the age of majority at the age of nineteen are no longer entitled to child support.<sup>37</sup> However, in regards to college costs, the statute provides:

If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute a sum determined to be reasonable for the education expenses of the child, taking into

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31. See, e.g., MO. ANN. STAT. § 452.340 (West 2011); COLO. REV. STAT. ANN. § 14-10-115 (West 2011); IOWA CODE ANN. § 598.21 (West 2011). For an analysis of parental support of children's college costs in the states of Kentucky, Alabama, Connecticut, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Montana, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, and Washington, see Marzano-Lesnevich & Laterra, *supra* note 30, at 339–373.

32. See Venohr & Williams, *supra* note 6.

33. Provided that the custodial parent has relinquished the child from parental control by express or implied consent. MO. ANN. STAT. § 452.340(3).

34. *Id.* § 452.340(5).

35. *Id.*

36. *Id.*

37. COLO. REV. STAT. ANN. § 14-10-115(13)(a) (West 2011).

account the resources of each parent and the child.<sup>38</sup>

In other words, Colorado permits a university stipend, but not necessarily post-majority child support.

In Iowa, meanwhile, the court may order a postsecondary education subsidy if good cause is shown.<sup>39</sup> The cost is determined based on the cost of in-state public institution, from which the child's expected contribution is deducted.<sup>40</sup> The remainder is apportioned between the parents, but the amount paid by each parent should not exceed one-third of the total cost of postsecondary education.<sup>41</sup> Children must forward their transcripts to their parents within ten days of receipt.<sup>42</sup>

The state supreme courts in Arkansas, North Dakota, and Alabama have also permitted divorce courts to impose awards of post-majority support, including college expenses.<sup>43</sup> In determining the appropriateness of a post-majority support award for higher education, the courts may consider factors such as whether the parent, if still living with the child, would have contributed to the higher education; the ability of the parent to pay the costs; the commitment to and the aptitude of the child for the requested education; the ability of the child to earn income during the school year or school recesses; available financial aid; the child's relationship to the paying parent in terms of the shared goals between the parent and the long range ones of the child; and all other factors that appear reasonable and necessary.<sup>44</sup>

The Washington Supreme Court also found in favor of post-majority child support based on constitutional grounds.<sup>45</sup> In *Childers v. Childers*, the court, using a rational basis review, upheld the duty to pay a post-majority child's college education based on the state's strong legitimate interest in ensuring education.<sup>46</sup> The court underscored that

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38. *Id.* § 14-10-115(15)(c).

39. IOWA CODE ANN. § 598.21F(1) (West 2011).

40. *Id.* § 598.21F(2)(a).

41. *Id.* § 598.21F(2)(b).

42. *Id.* § 598.21F(2)(c).

43. Carol R. Goforth, *The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses*, 56 ARK. L. REV. 93, 100-03 (2003); see also *Donarski v. Donarski*, 581 N.W.2d 130 (N.D. 1998) (permitting college support based on the general discretionary power of the court).

44. Richard Corbi, Note, *You Have the Right to Cable TV, But Not Education: A Proposal to Amend the Bankruptcy Code to Permit All Education Expenses in Chapter 13 Bankruptcy Plans*, 43 FAM. CT. REV. 625, 633 (2005).

45. *Childers v. Childers*, 575 P.2d 201 (Wash. 1978).

46. *Id.* at 208-09. The court also upheld the parental duty to pay support based on the state interest in the welfare of its children. *Id.*



children of divorced parents face more economic disadvantages than children from intact homes.<sup>47</sup> Furthermore, the court determined that the change of the relevant statutory language from “minor children” to “minor or dependent child” may have illustrated the legislature’s intent to provide courts with the discretion to determine support.<sup>48</sup> Accordingly, the court held that the support obligation is based on dependency, not minority, and ends at emancipation, not majority.<sup>49</sup>

Some states permit a court to extend child support to disabled children as well. The relevant Missouri statute allows the court to extend the parental support obligation past a child’s eighteenth year when he is physically or mentally incapacitated from supporting himself and is insolvent as well as unmarried.<sup>50</sup> The corresponding Colorado statute permits the court or the delegate child support enforcement unit to order child support for a mentally or physically disabled child beyond the statutory majority age of nineteen, which would include payments for medical expenses and insurance.<sup>51</sup>

In many states, therefore, university education and a child’s disability are two recognized exceptions to the termination of child support upon the child’s attainment of majority. Otherwise, child support terminations are generally linked to a statutorily authorized age—even if the adult children are incapable of supporting themselves.<sup>52</sup>

Unemployment or underemployment has not generally merited parental financial support. In these cases, public assistance becomes a source of support, such as unemployment insurance.<sup>53</sup> However, unemployment and underemployment become more significant when the parent owing child support becomes unemployed or underemployed, not when the unemployed or underemployed person is an adult child.<sup>54</sup>

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47. *Id.* at 208.

48. *Childers*, 575 P.2d at 204.

49. *Id.* at 205. The court decided not to determine the exact meaning of “emancipation,” instead basing its decision on the issue of whether the lower court abused its discretion. *Id.*

50. MO. ANN. STAT. § 452.340(4) (West 2011).

51. COLO. REV. STAT. ANN. § 14-10-115(13)(a)(II) (West 2011).

52. See *supra* Part II.B. Compare *infra* note 58 and accompanying text.

53. As the 2008 recession continued, President Barack Obama and Congress extended unemployment benefits numerous times. Patricia Murphy, *Obama Signs Unemployment Benefits Extension*, POLITICS DAILY, June 2010, available at <http://www.politicsdaily.com/2010/07/22/congress-extends-unemployment-benefits/>.

54. Timothy M. Smeeding et al., *Young Disadvantaged Men: Fathers, Families, Poverty, and Policy*, 635 ANNALS 6, 13 (2011) (noting that when fathers do not earn any money, their child support arrears build up instead of being waived). Alimony payments are also, as a rule, not reduced upon self-imposed changes in salary. Margaret Ryznar, *All’s Fair*

In sum, while circumstances exist that would permit American courts to order post-majority child support, such as continued university education or disability, the approaches are neither uniform nor universal. It may therefore be insightful to examine another country's approach to post-majority child support, such as Poland's approach.

### III. POLISH LAW ON POST-MAJORITY CHILD SUPPORT

In Poland, regulation of the maintenance obligation is embedded in the Family and Guardianship Code of 25th February 1964 (KRO).<sup>55</sup> The statutory provisions relating to this obligation are absolutely binding, and the parties cannot change them. Consequently, the emergence and extent of this obligation are dependent on the conditions specified in the KRO. If they no longer apply, the maintenance obligation expires.<sup>56</sup>

The general rule regarding the maintenance obligation of parents to children is described in art. 133 § 1 KRO. According to this regulation, parents are obliged to provide maintenance to a child who cannot provide for himself or herself, unless the income from the child's property is sufficient to cover his or her maintenance and upbringing.<sup>57</sup>

This means that there is no general rule stating that the age of majority causes the end of the maintenance obligation, but the courts use a presumption that adult children are able to provide for themselves in terms of maintenance.<sup>58</sup> In other words, reaching the age of majority is not a criterion for the expiration of the maintenance obligation.<sup>59</sup> Instead, the parents' obligation expires when their child is able to provide maintenance for himself or herself. This might happen if, for

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*in Love and War: But What About in Divorce? The Fairness of Property Division in American and English Big Money Divorce Cases*, 86 N.D. L. REV. 115, 144 (2010); see also *infra* notes 126–127.

55. KODEKS RODZINNY I OPIEKUŃCZY [KRO] [THE FAMILY AND GUARDIANSHIP CODE], Feb. 25, 1964, J.L. No. 9, item 59, as amended. This Code came into force on January 1, 1965.

56. Ewa Wojtaszek-Mik, *Wygaśnięcie Obowiązku Alimentacyjnego Rodziców Wobec Dzieci*, in W TROSCE O RODZINĘ: KSIĘGA PAMIĄTKOWA KU CZCI PROFESOR WANDY STOJANOWSKIEJ 577 (Mirosław Kosek & J. Słyk eds., 2008).

57. *Id.*

58. Advocates of this doctrine agree that art. 133 § 1 KRO means that the parent's duty of maintenance does not expire on the date the child becomes an adult. See *Civil Law Codification Commission Green Paper on An Optimal Vision of the Civil Code of the Republic of Poland*, at 127 (Zbigniew Radwański ed., 2006), available at <http://www.ejcl.org/112/greenbookfinal-2.pdf>.

59. MAREK ANDRZEJEWSKI, PRAWO RODZINNE I OPIEKUŃCZE 219 (2006).

example, a child completes his or her education and enters a profession, achieving financial independence.

There are, however, different circumstances that justify perpetuating a maintenance obligation even though a child is of age.<sup>60</sup> Notably, unlike in American law,<sup>61</sup> the parental maintenance obligation can be restored when an adult child is without financial means.<sup>62</sup> Nonetheless, the exact duration of the maintenance obligation is a matter of controversy. This is especially true given that Polish courts have relatively broad discretion regarding whether a maintenance obligation rests with the parents.<sup>63</sup>

It is possible that a child who is physically or mentally disabled can never provide maintenance for himself or herself. In such cases, the parents' maintenance obligation can be long-lasting, even until the death of one of the parties.<sup>64</sup> In these special situations, the legal basis for this obligation is the above-mentioned art. 133 § 1 KRO. In its decisions, the Polish Supreme Court has assumed that a disabled child is not able to support himself or herself.<sup>65</sup> Furthermore, some court decisions<sup>66</sup> indicate that the inability of adult children to support themselves as a result of a complete inability to work due to alcoholism or drug addiction does not inherently preclude the maintenance obligation of the parents.<sup>67</sup> This is especially true if the parents neglected their duties in bringing up the child, thereby potentially contributing to the child's addictions.<sup>68</sup>

Before being amended on June 13, 2009, the KRO treated adult and minor children in the same way. Specifically, from the moment of the

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60. It is clear that the maintenance obligation rests with the parents of minor children.

61. See *supra* Part II.

62. See art. 133 § 2 KRO; see also Tadeusz Dominczyk, in *KODEKS RODZINNY I OPIEKUNECZY: KOMENTARZ* 817 (Kazimierz Piasecki ed., 2006).

63. There are many doubts on this matter. The Civil Law Codification Commission, acting under the Minister of Justice, had noted these doubts and taken them into consideration in its preparation for the reform of Polish civil law. See *Civil Law Codification Commission Green Paper*, *supra* note 58, at 127–29.

64. Dominczyk, *supra* note 62, at 818.

65. See Uchwała Sądu Najwyższego z dnia 31 stycznia 1986 r., III CZP 76/85 [Decision of the Supreme Court of the Republic of Poland of 31 Jan. 1986].

66. See *id.*

67. Janusz Pietrzykowski, in *KODEKS RODZINNY I OPIEKUNECZY: KOMENTARZ* 1105 (Krzysztof Pietrzykowski ed., 2010). The author points out, however, that the claim of children for maintenance in the situation outlined above can be regarded as contrary to the principles of social coexistence in art. 5 of the Civil Code.

68. Tadeusz Smoczyński, *System Prawa Prywatnego*, in *PRAWO RODZINNE I OPIEKUNECZE* 716 (Tadeusz Smoczyński et al. eds., 2003).

child's birth<sup>69</sup> to the moment when the child could provide his or her maintenance, the parents were obliged to support the child.<sup>70</sup> These rules, however, did not consider the significant differences between minor and adult children, many due to the fact that adult children are not under the authority of their parents.<sup>71</sup> Parents bring up and exercise care only over minor children,<sup>72</sup> and therefore applying maintenance obligations to adult children not under the authority of their parents, who do not have any influence on their children's behavior, can cause some hesitation. Accordingly, art. 133 KRO was amended, giving parents of adult children the right to withdraw from the maintenance obligation if its exercise would be linked to excessive loss, or if the child has not made efforts to support himself or herself. This amendment means that the absolute obligation of parental maintenance applies only to minor children.<sup>73</sup>

The option for avoidance of the parental maintenance obligation is new in the KRO (the written statutory law).<sup>74</sup> In a few of its decisions, the Supreme Court identified specific instances when the maintenance obligation of adult children could be discontinued. For example, maintenance could be discontinued if the support would cause excessive damage to the property of the parents.<sup>75</sup>

Such decisions discontinuing parental maintenance, however, have been few. The courts' predominant view has been that regardless of the age of the child, parents are committed to providing maintenance if the child is not able to provide maintenance himself or herself. The action for maintenance may be dismissed only if the parents are unable to fulfill their obligation to provide maintenance, but the assumption is that parents should share even the smallest incomes with their child.<sup>76</sup>

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69. *Id.* at 287. The existence of the maintenance obligation towards children is not dependent on "lack of means" (*niedostatek*).

70. JACEK IGNACZEWSKI ET AL., *ALIMENTY: KOMENTARZ* 81 (2009) [hereinafter *ALIMENTY*].

71. *See* art. 92 KRO.

72. *See* art. 95 KRO.

73. *See* Wojtaszek-Mik, *supra* note 56, at 579.

74. Poland is a country where judicial decisions are not sources of law.

75. *See* Uchwała Sądu Najwyższego z dnia 18 maja 1995 r., III CZP 59/95 [Decision of the Supreme Court of the Republic of Poland of 18 May 1995]; Wyrok Sądu Najwyższego z dnia 10 grudnia 1998 r., I CKN 1104/98 [Decision of the Supreme Court of the Republic of Poland of 10 Dec. 1998]. In the latter decision, the Supreme Court emphasized that parents who are due small pensions and have only modest hedges for their material needs should be exempted from their obligation to financially support an adult child who, having learned a profession, achieves mediocre results during further studies.

76. *See* Wyrok Sądu Najwyższego z dnia 24 marca 2000 r., I CKN 1538/99 [Decision

In light of the current legislation, the principle of the “last slice” does not apply to adult children.<sup>77</sup> This principle essentially means that children have the right to an equal standard of living with their parents,<sup>78</sup> but this rule cannot be interpreted in a way that compels parents to make extraordinary efforts in a situation where an adult child simply does not want to become independent.

Present regulation therefore allows parents to avoid their maintenance obligation not only in difficult financial situations, but also in cases wherein adult children are not interested in gaining independence and self-satisfaction of their needs. The rationale for the introduction of greater exceptions from parental maintenance obligations is the observation that the previous generosity of maintenance obligations justified and even rewarded negative attitudes of adult children, who had not made any efforts to become independent.<sup>79</sup> An absolute maintenance obligation of adult children despite their inappropriate behavior would be morally and legally undesirable.<sup>80</sup>

The duty for parents to maintain their adult children is terminated when they gain their independence.<sup>81</sup> Therefore, it is important to establish when children become independent. There are several circumstances in which children can be considered independent, including when they finish their studies, collect unemployment benefits,

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of the Supreme Court of the Republic of Poland of 24 Mar. 2000]. In this decision, the Court emphasized that a child who not only has reached the age of majority, but who also has earned an education and entered a professional life that permitted self-maintenance, does not lose a right to maintenance if, for example, that child wants to continue an education that is justified by the academic record at that point. The Supreme Court has also pointed out that the parents' difficult financial situation does not exempt them from the maintenance obligation—they are forced to share with their children even a small income, unless the parents are completely deprived of such a possibility. In extreme cases, especially during a transitional period, fulfillment of this parental obligation may even require a sale of part of their assets. *See also* Wyrok Sądu Najwyższego z dnia 6 stycznia 2000 r., I CKN 1077/99 [Decision of the Supreme Court of the Republic of Poland of 6 Jan. 2000].

77. IGNACZEWSKI, *supra* note 70, at 83.

78. Pietrzykowski, *supra* note 67, at 1102. Some authors have criticized this rule, arguing that parents are obliged only to cover the needs of their children that are justified for a good upbringing. The parents are not, however, required to satisfy all the needs of their children, especially luxury needs, even if parents have the sufficient means to do so. *See* Smczyński, *supra* note 68, at 719.

79. *See* the justification of the draft of law that introduced art. 133 KRO. Print No. 888 of the Sejm 6th term (Sejm is the lower house of the Polish Parliament).

80. TADEUSZ SMYCZYŃSKI ET AL., PRAWO RODZINNE I OPIEKUNECZE 288 (2009); *see also* Smczyński, *supra* note 68, at 715.

81. JACEK IGNACZEWSKI, OBOWIĄZEK ALIMENTACYJNY PO NOWELIZACJI. ART. 128-144 KRO: KOMENTARZ 67 (2009) [hereinafter OBOWIĄZEK ALIMENTACYJNY PO NOWELIZACJI].

and marry.

The start of a child's education has several implications for parents and their maintenance obligations. According to art. 96 § 1 KRO, parents are obliged "to care for the physical and spiritual development of the child, and prepare him/her adequately to work for the good of society in accordance with his/her talents." Putting together this provision with art. 133 KRO, parents are expected to bear the costs related to a child who is a student.

This may be justifiable given that the start of a course of study is preparation for future income-earning work. Often times, it is important for an individual child's financial and professional future to undertake and complete his or her studies.<sup>82</sup> Whether a child is serious about his or her studies can be judged by his or her performance during the course of study. If the child's ability is sufficient, parents cannot prohibit a child from beginning his studies.<sup>83</sup>

The mere fact that a child comes of age during the period of study does not mean that the child is able to support himself or herself. Parents cannot waive the obligation of maintenance in these circumstances by arguing that the discontinuation of study and the commencement of work would allow the child to maintain himself or herself.<sup>84</sup> On the contrary, the Polish Supreme Court has permitted parental maintenance if children want to continue their education, but this intention must be justified by their previous academic records.<sup>85</sup> In determining the appropriateness of continuing maintenance for students, Polish courts may take into account not only the child's desire to continue learning, but also whether the child's personal abilities and character traits really allow him or her to continue the education.<sup>86</sup>

The maintenance obligation of parents lasts until the child's graduation. This does not mean, however, that parents are obliged to provide maintenance in a situation wherein a child neglects studies, has made no progress, does not pass term exams, or must repeat a year of study.<sup>87</sup> The maintenance obligation lasts only for as long as the child

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82. See also *supra* note 12 and accompanying text.

83. The opposite position might lead to an inhibition of the development of children. See Pietrzykowski, *supra* note 67, at 1106.

84. IGNACZEWSKI, *supra* note 70, at 84.

85. Wyrok Sądu Najwyższego z dnia 24 marca 2000 r., I CKN 1538/99 [Decision of the Supreme Court of the Republic of Poland of 24 Mar. 2000].

86. Wyrok Sądu Najwyższego z dnia 14 listopada 1997 r., III CKN 217/97 [Decision of the Supreme Court of the Republic of Poland of 14 Nov. 1997].

87. Wyrok Sądu Najwyższego z dnia 8 sierpnia 1980 r., III CRN 144/80 [Decision of

uses the time to learn.<sup>88</sup> Only effective study permits an adult child to rely on parental maintenance.<sup>89</sup>

Another interesting issue considered by the Polish courts is whether parents are required to pay for a student's return to university a few years after graduating from high school if the child was able to self-support in the meantime. In such cases, the Polish Supreme Court has ruled that the child cannot require parents to cover the costs of such studies, and instead the child could take advantage of opportunities such as night school and continuing education.<sup>90</sup>

However, this view is not necessarily reasonable in every case. For example, a student's continued studies could lead to significantly better earnings in the future. Maintenance payments may be justified if the student's delay in undertaking the studies resulted from the reluctance of the parents to cover the costs of studying in the first place. This is especially true if the child's abilities and test scores suggest that the studies would have been completed on time if the parents had supported the education earlier. The Polish Supreme Court seems to have adopted this direction, stating that if the child's current skills do not provide him or her with an adequate standard of living and if the child intends to improve these skills by, for example, undertaking higher education, the fact that prior to the studies the child worked and earned money does not exempt parents from maintenance on the grounds that the child can support himself or herself.<sup>91</sup>

Education can be quite expensive,<sup>92</sup> while parents may be poorly skilled and low-earning. Therefore, the question arises whether, in such cases, parents are obliged to pay maintenance despite their inability to pay. The Polish Supreme Court has held that, in such cases, it is difficult to require parents to cover the high costs of a child's studies, especially in the context of art. 135 § 1 KRO, which illustrates that the scope of maintenance provided depends on the justified needs of the child, as well as the earning capacity and assets of the parents.<sup>93</sup>

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the Supreme Court of the Republic of Poland of 8 Aug. 1980].

88. JERZY IGNATOWICZ & MIROSLAW NAZAR, *PRAWO RODZINNE* 327 (2006).

89. Dominczyk, *supra* note 62, at 817.

90. Wyrok Sądu Najwyższego z dnia 17 grudnia 1976 r., III CRN 280/76 [Decision of the Supreme Court of the Republic of Poland of 17 Dec. 1976].

91. Wyrok Sądu Najwyższego z dnia 11 lutego 1986 r., II CRN 439/85 [Decision of the Supreme Court of the Republic of Poland of 11 Feb. 1986].

92. See *supra* notes 13–15 and accompanying text.

93. See Uchwała Sądu Najwyższego z dnia 18 maja 1995 r., III CZP 59/95 [Decision of the Supreme Court of the Republic of Poland of 18 May 1995]; see also *infra* note 117 and accompanying text.

If, on the other hand, a child becomes independent, he or she can register with the employment office and start drawing unemployment benefits when he or she cannot get a job. This does not automatically mean that the child is able to support himself or herself.<sup>94</sup> Instead, the child's ability to self-support can be determined by analyzing the specific facts of the given case.<sup>95</sup> Setting aside the parental maintenance obligation, the consideration is whether the child is able to get a job before the end of the period in which he or she is entitled to receive unemployment benefits. Moreover, it is also necessary to take into account whether the child's allowance is sufficient to meet his or her needs at least at a basic, but sufficient, level.

Another situation that may affect the parents' duty to maintain the child is the child's entry into marriage. Marriage alone does not override the parents' maintenance obligation, but it does subordinate their obligation to the spouse's obligation.<sup>96</sup> In other words, the maintenance obligation of the spouse outweighs the duty of the relatives, and therefore the child should first seek maintenance from the spouse.<sup>97</sup>

Notwithstanding this legal framework, it is also possible that the maintenance obligation will expire before the child becomes an adult. As Polish law does not link child maintenance to the child's age of majority,<sup>98</sup> but to the means of the child, the minor child may occasionally obtain sufficient income for his or her own maintenance, thereby terminating the parental obligation.<sup>99</sup> However, the Polish Supreme Court has held that a minor child cannot be expected to maintain himself or herself.<sup>100</sup>

Another interesting rule in Polish law is the possibility of avoidance of the maintenance obligation, which should be discussed to provide the full context of the rules on the maintenance obligation of adult children. According to art. 144 KRO, an obliged person may avoid complying

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94. Uchwała Sądu Najwyższego z dnia 18 maja 1995 r., III CZP 59/95 [Decision of the Supreme Court of the Republic of Poland of 18 May 1995].

95. IGNACZEWSKI, *OBOWIĄZEK ALIMENTACYJNY PO NOWELIZACJI*, *supra* note 81, at 67.

96. WANDA STOJANOWSKA, *OJCOSTWO PRAWNE A OJCOSTWO BIOLOGICZNE* 151 (1985).

97. See IGNACZEWSKI, *ALIMENTY*, *supra* note 70, at 86.

98. Pietrzykowski, *supra* note 67, at 1105; see also *supra* notes 52, 58 and accompanying text.

99. See Uchwała Sądu Najwyższego z dnia 16 grudnia 1987 r., III CZP 91/86 [Decision of the Supreme Court of the Republic of Poland of 16 Dec. 1987].

100. See Wyrok Sądu Najwyższego z dnia 14 listopada 1997 r., III CKN 217/97 [Decision of the Supreme Court of the Republic of Poland of 14 Nov. 1987].



with the maintenance obligation if the demand for maintenance is contrary to the principles of social coexistence. Notably, this requirement does not apply to parents in relation to their minor children.<sup>101</sup>

In sum, Polish law is very flexible regarding post-majority support and the courts have broad discretion in determining whether parents are obliged to provide maintenance to their adult children.<sup>102</sup> In fact, maintenance of adult children is an example of the important role of the courts and the impact of judicial decisions in civil law countries such as Poland. Such broad judicial freedom is occasionally criticized, with critics recommending the introduction of an explicit age of majority of children that would terminate parental maintenance.<sup>103</sup> In the meantime, courts continue to have broad discretion in awarding post-majority child support.

#### IV. IMPLICATIONS OF A POST-MAJORITY CHILD SUPPORT SCHEME

The issue of intergenerational support for post-majority children is shared by both the United States and Poland. However, the approaches to post-majority support in each country are different.

Regardless of which regulation legislators select, there are two major elements to any post-majority support system that may be determinative of the success of any such system. The first is the very practical issue of the enforcement of post-majority child support, while the second element is the more theoretical question of which family model society desires—only a certain model would support post-majority child support, and each model has its advantages and disadvantages.

##### *A. Post-Majority Child Support Enforcement Problems*

If a duty for parents to financially support their adult child's education is imposed, the practical issue of enforcement arises. This is

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101. For more details, see Zdzisław Jancewicz, *Kierunki Zmian w Przepisach o Obowiązku Alimentacyjnym*, in *PRAWO RODZINNE W DOBIE PRZEMIAN 194–96* (Piotr Kasprzyk & Piotr Wiśniewski eds., 2009).

102. Notions such as “excessive damage,” as well as the necessity of adjudicating whether a child can provide maintenance for himself and if the child endeavors to support himself, means that the role of the courts is very important. See Wojtaszek-Mik, *supra* note 56, at 582.

103. Jancewicz, *supra* note 101, at 190.

true in both the literal sense of collecting money from parents, and the theoretical issue of the fairness of such collection, depending on the family model implicated.

Notably, there is a major practical problem with the enforcement of such a duty. Child support for minor children—which is far less controversial than post-majority support—has been notoriously difficult to collect. In 2009, only about 61.0% of the \$35.1 billion due in child support for minors was reported as received, averaging \$3,630 per custodial parent due support.<sup>104</sup> Child support collection was difficult even when the money was required for children's basic necessities—28.3% of all custodial parents had incomes below poverty, while 36.1% of those who received full child support payments were below poverty.<sup>105</sup> Such data are not available for Poland, but according to the latest report of the Supreme Chamber of Control (Naczelna Izba Kontroli), the total amount of alimony debts is approximately 10.000.0000.000 PLN.<sup>106</sup> Elaborate enforcement systems have been established to collect child support money for minor children, but they have not been entirely successful.<sup>107</sup>

Often times, child support collection is difficult because the debtor parents do not have much money to be collected. In a survey by the United States Government Accounting Office, two-thirds of custodial mothers not receiving owed child support stated that the fathers were unable to pay.<sup>108</sup> Therefore, although poverty is not an excuse for the nonpayment of child support for minor children,<sup>109</sup> collection is difficult

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104. U.S. CENSUS BUREAU, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2007 (Nov. 2009), *available at* <http://www.census.gov/prod/2011pubs/p60-240.pdf>.

105. *Id.*

106. See Najwyższa Izba Kontroli [Supreme Audit Office], *NIK o Aalimentach* [NIK child support] (June 3, 2011) (Pol.), *available at* <http://www.nik.gov.pl/aktualnosci/nik-o-alimentach.html>. This amount includes only alimony that has been paid by the Alimony Fund, an institution founded to pay alimony for unreliable debtors. However, the total amount of unpaid alimony is larger because not everyone is entitled to receive money from the Alimony Fund. The rules on the Alimony Fund are regulated by the Act of Assistance to the Persons Entitled to Alimony of 7th of September 2007.

107. Elizabeth Warren, *The New Economy and the Unraveling Social Safety Net: The Growing Threat to Middle Class Families*, 69 BROOKLYN L. REV. 401, 410 n.27 (2004) (noting that those behind on child support payments may lose their driver's license or work permits (such as a contractor's license)); see also Jennifer Goulah, Comment, *The Cart Before the Horse: Michigan Jumps the Gun in Jailing Deadbeat Dads*, 83 U. DET. MERCY L. REV. 479, 486 (2006).

108. U.S. GEN. ACCOUNTING OFFICE, GAO/HRD-92-39FS, INTERSTATE CHILD SUPPORT: MOTHERS REPORT RECEIVING LESS SUPPORT FROM OUT-OF STATE FATHERS 19 (1992).

109. See *supra* note 54 and accompanying text; see also Goulah, *supra* note 107, at 479.

when there are no assets to collect.

The collection of funds for an adult child's college education, disability, or unemployment would be at least this difficult, and likely more so given that college education is more discretionary, more expensive, and more controversial than the basic necessities of food and housing for minor children.<sup>110</sup>

Beyond the literal and universal problem of enforcing a parental obligation to pay for adult children, fairness issues arise in the United States due to the relatively inequitable treatment by American courts of married parents and divorced parents in ordering post-majority support. Specifically, the courts do not become as involved in intact family units,<sup>111</sup> making it more problematic to achieve a court order for support. Although a private cause of action might be created to aid children in claims against their parents, such a private cause of action continues to run afoul of the courts' reluctance to interfere with intact family units.

In divorce cases, meanwhile, the courts wield wide discretion over child support and other financial decisions.<sup>112</sup> With the power to intervene in family breakups, the court may compel divorced parents to pay for their children's college costs while married parents escape this obligation. Although parental or marital statuses do not qualify as a protected class, this disparate treatment of married and divorced parents in regard to children's college costs may create unequal treatment.

On the other hand, divorced and intact families may be sufficiently different to avoid these concerns. In fact, the supposed financial inequities between children of married parents and those of divorced parents is the justification for judicial intervention in the latter situation. According to one court, "Parents, when deprived of the custody of their children, very often refuse to do for such children what natural instinct would ordinarily prompt them to do."<sup>113</sup> As another Washington court noted, "In allowing for divorce, the State undertakes to protect its victims. Perhaps there has been an equal protection problem in regard to

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110. See *supra* notes 13–14 and accompanying text.

111. For example, one married couple could not agree on the education of the child and brought the case to court, but the Alabama Supreme Court held that it had no jurisdiction in "the settlement of a difference of opinion between parents as to what is best for their minor child when the parents and child are all living together as a family group." *Kilgrow v. Kilgrow*, 107 So. 2d 885, 888–89 (Ala. 1958).

112. See, e.g., Stacy L. Brustin, *The Intersection Between Welfare Reform and Child Support Enforcement: D.C.'s Weak Link*, 52 CATH. U. L. REV. 621, 651 (2003) (noting the structure for adjudicating child support cases changed in the D.C. Family Court in 2002).

113. *Esteb v. Esteb*, 244 P. 264, 268 (Wash. 1926).

the children who have been deprived of economic advantages which they would have had absent the remedy of divorce, and which children of married parents retain.”<sup>114</sup> One commentator has noted such a pattern, “A number of courts adopt the policy that a child should not suffer because his parents are divorced. The child of divorced parents should be in no worse position than a child from an unbroken home whose parents could be expected to supply a college education.”<sup>115</sup> In other words, some courts are intervening to protect the children of divorced parents from being financially unsupported, even once they reach the age of majority.

However, there may be problems in the assumption that college-aged children of married families are better off than those from divorced families. Indeed, the assumptions are based on the idea that married parents are more fit than divorced ones, and that any such inequalities are reparable with money. Nonetheless, it is true that divorced parents, on average, are less wealthy than married ones.<sup>116</sup>

There are several additional issues regarding the enforcement of post-majority support. Many of these center around the determination of the amount of post-majority child support. One measure for child support is the ability of the parent to pay, as well as the amount required by the child.<sup>117</sup> However, this does not resolve the question of whether a divorced parent’s payments toward adult children should match the other parent’s, although this position is not favored.

Nonetheless, today’s high college tuition costs are cost-prohibitive for most families, giving great advantage to those children with parental financial support for college. On the other hand, the limited assets of many parents makes this question moot in most situations. In these cases, enforcement of post-majority support would be difficult, despite any theoretical notions of parental obligation.<sup>118</sup> Another theoretical issue is which model of the family is preferred, and which supports the

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114. *Childers v. Childers*, 575 P.2d 201, 207 (Wash. 1978).

115. Robert M. Washburn, *Post Majority Support: Oh, Dad, Poor Dad*, 44 TEMPLE L.Q. 319, 329 (1971).

116. In 1993, for example, the mean income for divorced American mothers was \$17,859, although for divorced fathers it was \$31,034. Arthur B. LaFrance, *Child Custody and Relocation: A Constitutional Perspective*, 34 U. LOUISVILLE J. FAM. L. 1, 6 (1996). But see Kelly Bedard & Olivier Deschênes, *Sex Preferences, Marital Dissolution, and the Economic Status of Women*, 40 J. HUM. RESOURCES 411 (2004) (suggesting that divorced women live in households with more income per person than never-divorced women).

117. Laura Raatjes, Note, *High-Income Child Support Guidelines: Harmonizing the Need for Limits with the Best Interests of the Child*, 86 CHI.-KENT L. REV. 317, 317 (2011).

118. See, e.g., *supra* notes 92–93 and accompanying text.

notion of post-majority support, considered next.

### *B. Model of Family*

Society's decision regarding the extent of parental obligations indicates society's preferences for a particular type of model of the family. The preferred model can treat family as either a social support system or a limited duty, and determines whether intergenerational obligations exist.

Any model of the family necessarily creates an incentives structure for the behavior of individual family members. For example, imposing obligations on parents to pay for their children's education raises the costs of having children, perhaps deterring people from having children.<sup>119</sup> This is especially so under broad consent theories—i.e., by having intercourse, one consents to parental duties should a child result—which can be stretched to justify extensive parental obligations into a child's adulthood.<sup>120</sup> On the other hand, a family model requiring parental financial involvement may permit and encourage parents to become passionate participants in the education of their children.<sup>121</sup>

If society chooses a less cohesive and interdependent model of family, the taxpayer is an alternate supporter. This is already the case in traditional child support cases, wherein the taxpayer is the alternate payor to a debtor parent.<sup>122</sup> Additionally, all children receive certain public goods funded by taxpayers, such as education below the university level. Laws have been enacted to compel parents to send their children to school, but this obligation is different from a university obligation, especially when the education is free to students.<sup>123</sup> The only

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119. For the argument that economic incentives drive women's behavior, see Edward J. McCaffery, *Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code*, 40 UCLA L. REV. 983, 1033, 1040–41 (1993) (arguing that Congress should lower married women's tax rates to encourage both marriage and married women's participation in the labor force).

120. Scott Altman, *A Theory of Child Support*, 17 INT'L J. L. POL'Y & FAM. 173, 179 (2003).

121. See generally Margaret Ryznar & Chai Park, *The Proper Guardians of Foster Children's Educational Interests*, 42 LOY. U. CHI. L.J. 147 (2010) (discussing factors to increase parental involvement in children's education).

122. See Altman, *supra* note 120, at 174.

123. Bruce C. Hafen, *Developing Student Expression Through Institutional Authority: Public Schools As Mediating Structures*, 48 OHIO ST. L.J. 663, 668 (1987). Hafen states, "Our tradition asserts that this compulsion [to educate minors] is in the best interest of children, because education ultimately develops their capacity to enjoy the full and meaningful exercise of their adult liberties." *Id.*

financial efforts required of the parents of minor children are essentially the basics of room and board while the child attends school, as child labor laws prevent children from obtaining these basics themselves.<sup>124</sup>

However, while taxpayers serve as the only viable alternative to supporting minor children, the adult child begins to undertake some financial responsibility in cases of higher education, unemployment, and disability. For example, while society might offer tax-subsidized universities—unlike the completely subsidized elementary and high school education—it is the individual students who are responsible for the remaining educational costs.<sup>125</sup>

The distinction between adult children and minor children, of course, is that adult children are expected to be self-sufficient and able to provide for themselves and their minor children, if there are any. This expectation has been upheld by the courts even in cases of parental unemployment. For example, if a noncustodial parent is unemployed but owes child support to a child on welfare, states must develop procedures whereby the court or agency can mandate that the parent participate in “work activities.”<sup>126</sup> Furthermore, income will be imputed to unemployed people in determining the amount of child support they owe for their minor children.<sup>127</sup> Therefore, it is generally expected that adults are able to earn an income and provide for themselves. Accordingly, while there are various arguments as to the extent to which the government should support children and the extent to which families should do so, these arguments do not necessarily translate to the case wherein the child at issue is an adult. In discussions of adult children, the emphasis invariably falls on “adult” rather than “children.”

The problem arises of how, under any given model of the family, to treat cases outside the main two-parent unit. For example, courts have ordered basic child support of victims of statutory rape, those deceived about birth control use, and those misled to believe that they were the

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124. See *supra* note 9 and accompanying text.

125. See, e.g., Macchiarola & Abraham, *supra* note 14, at 69; Howard, *supra* note 14, at 485–87.

126. Personal Responsibility and Work Opportunity Reconciliation Act, 42 U.S.C. § 666(a)(15)(B) (2006). Work activities include unsubsidized employment, subsidized private and public sector employment, on-the-job training, job search and job readiness assistance, community service programs, vocational education training of less than twelve months, and job skills training “directly related to employment.” *Id.* § 607(d).

127. Catherine Moseley Clark, Comment, *Imputing Parental Income in Child Support Determinations: What Price for a Child's Best Interest?*, 49 CATH. U. L. REV. 167, 177–79 (1999).

biological parents.<sup>128</sup> Because child support for these minors is debated, any parental support extended to college costs or other costs incurred during their adulthood is controversial.

In any case, necessities—at their most basic level—are most often met either by the family unit or government.<sup>129</sup> The family might offer a higher level of support, but this is purely discretionary and should remain so under a model that views the family as limited in its duties.<sup>130</sup> Court-compelled parental support of university students, as well as of unemployed or disabled adults, must also be limited under the model that views the family's obligations as restricted.

In sum, society's choice of family model, as reflected in its relevant statute on post-majority child support, has important consequences. The responsibilities imposed upon families must be weighed with their costs, and importantly, such responsibilities should not be cost-prohibitive to the formation of families.

### *C. The Merits of the Various Approaches and Precautionary Measures*

The experiences of the United States and Poland therefore present differing approaches to child support for adult children. First, there is the more cautious American approach of extending basic child support to adult children, especially in cases wherein the child is in college and her parents are divorcing, thereby depriving the child of otherwise intact sources of funding.<sup>131</sup> Second, there is the slightly more generous approach in Poland, where adult children may be eligible for funding if they choose to return to school, or if they are incapable of supporting themselves.<sup>132</sup> The difference between these two approaches partially results from the fact that in Poland, unlike in the United States, child maintenance is not linked to the child's age, but to the child's financial

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128. Altman, *supra* note 120, at 179.

129. Private charities can also provide certain services as an alternative to the government. See Lewis D. Solomon and Matthew J. Vliissides, Jr., *Faith-Based Charities and the Quest to Solve America's Social Ills: A Legal and Policy Analysis*, 10 CORNELL J. L. & PUB. POL'Y 265 (2001).

130. And thus explains the existence of the doctrine of necessities in family law, wherein courts intervene to ensure that the earning spouse is responsible for the payment of expenses incurred by the nonearning spouse for those things that are necessary for the family. Susan Kalinka, *Taxation of Community Income: It Is Time for Congress to Override Poe v. Seaborn*, 58 LA. L. REV. 73, 94 (1997). Necessity is determined by examining factors such as the spouses' means, social position, and circumstances. *Id.*

131. See *supra* Part II.

132. See *supra* Part III.

means.<sup>133</sup>

There are advantages and disadvantages to each approach, and each jurisdiction must select its preferred framework after weighing these. However, several precautions must be noted regarding any post-majority child support system, especially that which ties child maintenance to the child's financial means rather than age.

First, any post-majority support system should not discourage adult children from becoming self-sufficient. While judges must exercise discretion in granting post-majority support, brightline legislative rules or guidelines could be introduced to ensure that people are not encouraged to take financial advantage of their parents when a jurisdiction permits post-majority support. In the case of students, for example, it could be legislated that parents are not required to support their children past eight or ten university semesters,<sup>134</sup> or not required to financially support their child's return to school for a second career. Furthermore, it could be legislated that once they gain educational degrees or work skills, adult children cannot have their incomes supplemented by their parents, or receive unemployment support from the parents. These limitations would encourage students to maximize the use of the support they receive from parents—a social good—with the knowledge that they will soon acquire financial responsibility for themselves.

It is difficult to imagine that a disabled adult child could and would mislead a court to take advantage of her parents. This is contrary to the case of an unemployed adult child, who can intentionally avoid gaining employment to receive parental support.<sup>135</sup> Given this latter risk, it may be advisable for legislatures to avoid mandating parental support for unemployed adult children. In this case, there is support through unemployment insurance.<sup>136</sup> While this approach may incentivize adult children to enroll in school to avoid unemployment, educational support would also be limited under brightline rules and judicial discretion.

Second, it is important that a post-majority child support system not burden the family to the point of stunting family development. In principle, the extension of parental obligations to adult children may be problematic if people had different expectations upon the conception of

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133. See *supra* note 60 and accompanying text.

134. In Poland, the study of law takes ten university semesters.

135. Occasionally, adults attempt to avoid making alimony payments by becoming unemployed or underemployed. See *supra* note 54 and accompanying text.

136. See *supra* notes 53, 94–95 and accompanying text.



their children. If the law does not comport with a person's expectation of limited familial duty, the cost and burden of the family would weigh too heavily to be legally mandated.

Furthermore, support for post-majority children is often limited by the resources of the parents. If children begin bankrupting their parents, others will limit their own families. In any pro-family jurisdiction, as many are,<sup>137</sup> governments may want to encourage family growth by avoiding policies that would burden the family.

Accordingly, jurisdictions should consider the consequences of the various approaches to post-majority child support. If a jurisdiction decides to permit such support, it may decide to provide brightline guidelines to discourage adult children from taking financial advantage of their parents, as well as to permit courts to exercise discretion in individual cases to determine when such support is truly merited, without incentivizing adult children to avoid self-sufficiency.

## V. CONCLUSION

In sum, the issue of intergenerational support includes important questions regarding the support of adult children who are students, disabled, or unemployed. Different jurisdictions have taken different approaches. Certain American states permit actions for post-majority support for students and disabled, often when the issue of financial support for the various family members is brought to the courthouse steps by a divorce case. In Poland, meanwhile, actions for post-majority support also occur outside the divorce context and for the unemployed.

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137. Many jurisdictions seek higher fertility rates. In Japan, for example, the local government authorities have even resorted to match-making. David McNeill and Chie Matsumoto, *Fertility Crisis in Japan: Let the State Find You a Mate*, THE INDEPENDENT, Nov. 10, 2009, available at <http://www.independent.co.uk/news/world/asia/fertility-crisis-in-japan-let-the-state-find-you-a-mate-1817736.html>. A notable exception is China, which has implemented a one-child policy. This policy resulted from China's population growth. In 1979, therefore, the Chinese government implemented a policy to limit each family to one birth. Robert S. Gordon, Comment, *The New Chinese Export: Orphaned Children—An Overview of Adopting Children From China*, 10 TRANSNAT'L LAW 121, 131 (1997). There are a few minor exceptions to this policy, such as in rural areas, where a second child is permitted when the first one was a girl. Nili Luo & David M. Smolin, *Intercountry Adoption and China: Emerging Questions and Developing Chinese Perspectives*, 35 CUMB. L. REV. 597, 600 (2004). Another exception to the one-child policy occurred when a major earthquake in China killed many couples' only child; these parents were allowed to have another child. Associated Press, *China's One Child Policy to Make Exceptions: Parents Whose Only Child Was Killed in the Quake Could Have Another Child*, May 26, 2008, available at <http://www.msnbc.msn.com/id/24829234/>.

A comparative analysis of this topic therefore reveals not only the universality of the issue of post-majority support, but also the differing approaches to it, as well as their advantages and disadvantages.

Any discussion of this topic entails considering the practical aspect of child support enforcement, as well as selecting the theoretical model of the family. If the family is viewed as a social support system, then intergenerational obligations must exist. On the other hand, if familial independence and personal autonomy is to be incentivized, then perhaps establishing such intergenerational obligations is counterproductive. Legislators must weigh the various factors and select the required intergenerational support in their own jurisdictions, particularly as the presence of this issue continues to increase in the current economic climate, which is difficult for both parents and their adult children.